Meeting of States Parties

Distr.: General
24 March 2017
English
Original: English/French

Twenty-seventh Meeting
New York, 12-16 June 2017

Annual report of the International Tribunal for the Law of the Sea for 2016

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I. Introduction

1. The present report of the International Tribunal for the Law of the Sea, which is submitted to the Meeting of States Parties under rule 6, paragraph 3(d), of the Rules of Procedure for Meetings of States Parties, covers the period from 1 January to 31 December 2016.

2. The Tribunal was established by the 1982 United Nations Convention on the Law of the Sea. It functions in accordance with the relevant provisions of parts XV and XI of the Convention, the Statute of the Tribunal (hereinafter "the Statute"), as contained in annex VI to the Convention, and the Rules of the Tribunal.

II. Organization of the Tribunal

3. The Tribunal is composed of 21 members, elected by the States Parties to the Convention in the manner provided for in article 4 of the Statute.

4. On 15 September 2016, Judge Cachapuz de Medeiros (Brazil) passed away. With his death, a vacancy has occurred in the Tribunal. Taking this change into account, as at 31 December 2016, the composition of the Tribunal was as follows:

Order of precedence	*Country*	*Date of expiry of term of office*
President		
Vladimir Vladimirovich Golitsyn	Russian Federation	30 September 2017
Vice-President		
Boualem Bouguetaia	Algeria	30 September 2017
Judges		
P. Chandrasekhara Rao	India	30 September 2017
Joseph Akl	Lebanon	30 September 2017
Rüdiger Wolfrum	Germany	30 September 2017
Tafsir Malick Ndiaye	Senegal	30 September 2020
José Luis Jesus	Cabo Verde	30 September 2017
Jean-Pierre Cot	France	30 September 2020
Anthony Amos Lucky	Trinidad and Tobago	30 September 2020
Stanislaw Pawlak	Poland	30 September 2023
Shunji Yanai	Japan	30 September 2023
James Kateka	United Republic of Tanzania	30 September 2023
Albert Hoffmann	South Africa	30 September 2023

Order of precedence	*Country*	*Date of expiry of term of office*
Zhiguo Gao	China	30 September 2020
Jin-Hyun Paik	Republic of Korea	30 September 2023
Elsa Kelly	Argentina	30 September 2020
David Joseph Attard	Malta	30 September 2020
Markiyan Z. Kulyk	Ukraine	30 September 2020
Alonso Gómez-Robledo Verduzco	Mexico	30 September 2023
Tomas Heidar	Iceland	30 September 2023

5. The Registrar of the Tribunal is Philippe Gautier (Belgium). The Deputy Registrar is Doo-young Kim (Republic of Korea).

A. Changes in the composition of the Tribunal

6. On 15 January 2016, at a Special Meeting of States Parties to the Convention, Judge Cachapuz de Medeiros was elected to fill the vacancy left by the resignation of Judge Vicente Marotta Rangel (Brazil) on 18 May 2015. Judge Cachapuz de Medeiros was elected for the period ending on 30 September 2017.

7. On 15 September 2016, Judge Cachapuz de Medeiros passed away, and subsequently, acting pursuant to article 6, paragraph 1, of the Statute, the Registrar, in a note verbale dated 4 November 2016, informed States parties to the Convention of the vacancy that had occurred at the Tribunal.

8. In the note verbale, the Registrar further informed the States parties that the election to fill the vacant seat would be held in June 2017, at the next triennial election of seven members of the Tribunal whose terms of office will expire on 30 September 2017.

B. Solemn declaration

9. Pursuant to article 11 of the Statute, every member of the Tribunal is required, before taking up his duties, to make a solemn declaration that he will exercise his powers impartially and conscientiously. The declaration is to be made at the first public sitting at which the member is present.

10. The solemn declaration provided for in article 5 of the Rules was made by Judge Cachapuz de Medeiros at a public sitting of the Tribunal on 7 March 2016.

C. Election of the Registrar

11. In accordance with article 32 of the Rules, the Registrar is elected from the candidates nominated by members of the Tribunal.

12. On 9 March 2016, the members re-elected Philippe Gautier (Belgium) Registrar of the Tribunal for a term of five years. Mr Gautier has been Registrar of the Tribunal since 2001. He was Deputy Registrar of the Tribunal from 1997 to 2001. He is a professor at the Catholic University of Louvain.

III. Chambers

A. Seabed Disputes Chamber

13. In accordance with article 35, paragraph 1, of the Statute, the Seabed Disputes Chamber consists of 11 judges selected by the Tribunal from among its elected members. The members of the Chamber are selected triennially and, as at 31 December 2016, the composition of the Chamber, in order of precedence, was as follows: Judge Jesus, President; Judges Akl, Ndiaye, Cot, Lucky, Pawlak, Yanai, Kateka, Paik, Kelly and Attard, members.

14. The terms of office of the members of the Chamber expire on 30 September 2017.

B. Special chambers

1. Special chamber under article 15, paragraph 2, of the Statute

15. Article 15, paragraph 2, of the Statute provides that the Tribunal shall form a chamber for dealing with a particular dispute, if the parties so request. The composition of such a chamber is determined by the Tribunal with the approval of the parties in the manner provided for in article 30 of the Rules.

16. During consultations held by the President of the Tribunal with representatives of Ghana and Côte d'Ivoire, a special agreement was concluded between the two States on 3 December 2014 to submit the dispute concerning the delimitation of their maritime boundary in the Atlantic Ocean to a special chamber of the Tribunal to be formed pursuant to article 15, paragraph 2, of the Statute. During the consultations, Ghana and Côte d'Ivoire conveyed their views regarding the composition of the special chamber of the Tribunal and this was recorded in the special agreement.

17. By an order dated 12 January 2015, the Tribunal decided to accede to the request of Ghana and Côte d'Ivoire to form a special chamber of five judges to deal with the case.

18. The composition of the Special Chamber to deal with the case is as follows: Vice-President Bouguetaia, President; Judges Wolfrum and Paik, Judges ad hoc Mensah and Abraham, members.

2. Chamber of Summary Procedure

19. The Chamber of Summary Procedure is established in accordance with article 15, paragraph 3, of the Statute and consists of five members and two alternates. In accordance with article 28 of the Rules, the President and the Vice-President of the Tribunal are ex officio members of the Chamber, with the President of the Tribunal serving as President of the Chamber.

20. The Chamber is constituted annually and, as at 31 December 2016, was composed, in order of precedence, as follows: Judge Golitsyn, President; Vice-President Bouguetaia and Judges Chandrasekhara Rao, Wolfrum and Jesus, members; Judges Cot and Attard, alternates.

3. Chamber for Fisheries Disputes

21. On 20 February 1997, the Tribunal established the Chamber for Fisheries Disputes in accordance with article 15, paragraph 1, of the Statute. On 8 March 2016, the Tribunal selected Judge Cachapuz de Medeiros as a member of the Chamber, of which Judge Marotta Rangel had been a member. On 15 September 2016, a vacancy occurred in the Chamber owing to the death of Judge Cachapuz de Medeiros. Taking this change into account, as at 31 December 2016, the composition of the Chamber, in order of precedence, was as follows: Judge Lucky, President; Judges Wolfrum, Ndiaye, Yanai, Kateka, Gao, Kulyk and Heidar, members.

22. The terms of office of the members of the Chamber expire on 30 September 2017.

4. Chamber for Marine Environment Disputes

23. On 20 February 1997, the Tribunal established the Chamber for Marine Environment Disputes in accordance with article 15, paragraph 1, of the Statute. As at 31 December 2016, the composition of the Chamber, in order of precedence, was as follows: Judge Kateka, President; Judges Pawlak, Hoffmann, Gao, Paik, Kelly, Attard, Kulyk and Gómez-Robledo, members.

24. The terms of office of the members of the Chamber expire on 30 September 2017.

5. Chamber for Maritime Delimitation Disputes

25. On 16 March 2007, the Tribunal established the Chamber for Maritime Delimitation Disputes in accordance with article 15, paragraph 1, of the Statute. As at 31 December 2016, the composition of the Chamber, in order of precedence, was as follows: Judge Golitsyn, President; Vice-President Bouguetaia and Judges Chandrasekhara Rao, Wolfrum, Ndiaye, Jesus, Yanai, Hoffmann, Gao, Gómez-Robledo and Heidar, members.

26. The terms of office of the members of the Chamber expire on 30 September 2017.

IV. Committees

27. During its forty-second session, on 4 October 2016, the Tribunal reconstituted its committees. They are composed as follows.[1]

[1] For the terms of reference of the committees, see: SPLOS/27, paras. 37-40; SPLOS/50, paras. 36-37; and SPLOS/136, para. 46.

A. Committee on Budget and Finance

28. The members of the Committee on Budget and Finance are: Judge Akl, Chairman; Judges Jesus, Lucky, Pawlak, Yanai, Hoffmann, Gao, Kelly and Kulyk, members.

B. Committee on Rules and Judicial Practice

29. The members of the Committee on Rules and Judicial Practice are: President Golitsyn, Chairman; Vice-President Bouguetaia, Judges Chandrasekhara Rao, Wolfrum, Ndiaye, Jesus (ex officio member as President of the Seabed Disputes Chamber), Cot, Pawlak, Yanai, Kateka, Hoffmann and Gómez-Robledo, members.

C. Committee on Staff and Administration

30. The members of the Committee on Staff and Administration are: Judge Paik, Chairman; Judges Wolfrum, Jesus, Lucky, Yanai, Attard and Heidar, members.

D. Committee on Library, Archives and Publications

31. The members of the Committee on Library, Archives and Publications are: Judge Wolfrum, Chairman; Judges Ndiaye, Pawlak, Paik, Kelly, Attard, Kulyk and Gómez-Robledo, members.

E. Committee on Buildings and Electronic Systems

32. The members of the Committee on Buildings and Electronic Systems are: Judge Kulyk, Chairman; Judges Cot, Lucky, Gao and Heidar, members.

F. Committee on Public Relations

33. The members of the Committee on Public Relations are: Judge Gao, Chairman; Judges Chandrasekhara Rao, Akl, Jesus, Kateka, Kelly, Gómez-Robledo and Heidar, members.

V. Meetings of the Tribunal

34. In 2016, judicial meetings of the Tribunal took place as follows:

The M/V "Norstar" Case (Panama v. *Italy)* (Preliminary objections)

Deliberations and a hearing took place from 19 to 29 September and from 25 October to 3 November 2016. The Tribunal delivered its judgment on preliminary objections on 4 November 2016.

35. The Tribunal also held two sessions devoted to legal and judicial matters as well as organizational and administrative matters: the forty-first session was held from 7 to 18 March 2016 and the forty-second from 4 to 15 October 2016.

36. The Tribunal decided to hold its forty-third session from 13 to 24 March 2017 in order to deal with legal matters having a bearing on the judicial work of the Tribunal and with organizational and administrative matters.

VI. Judicial work of the Tribunal

A. *The M/V "Norstar" Case (Panama v. Italy)*

37. On 17 December 2015, Panama filed an application with the Tribunal dated 16 November 2015 instituting proceedings against Italy in a dispute between the two States concerning the interpretation and application of the Convention "in connection with the arrest and detention by Italy of the *M/V Norstar*, an oil tanker registered under the flag of Panama".

38. In its application, Panama invoked, as the basis for the jurisdiction of the Tribunal, the declarations made by Panama and Italy under article 287 of the Convention. The case was entered in the list of cases of the Tribunal as case No. 25.

39. On 28 January 2016, the President held consultations with the representatives of the parties in order to ascertain their views with regard to questions of procedure in respect of the case.

40. On 3 February 2016, the President adopted an order fixing 28 July 2016 as the time limit for the filing of the memorial by Panama, and 28 January 2017 as the time limit for the filing of the counter-memorial by Italy.

41. Both Panama and Italy chose judges ad hoc pursuant to article 17 of the Statute and article 19 of the Rules. Mr. Gudmundur Eiriksson was chosen as judge ad hoc by Panama and Mr. Tullio Treves was chosen as judge ad hoc by Italy.

42. On 11 March 2016, within the time limit set by article 97, paragraph 1, of the Rules, Italy filed with the Tribunal "written preliminary objections under article 294, paragraph 3, of the Convention", in which Italy challenged "the jurisdiction of [the] Tribunal as well as the admissibility of Panama's claim".

43. Upon receipt of the preliminary objections by the Registry, pursuant to article 97, paragraph 3, of the Rules, the proceedings on the merits were suspended, as stated in the order of the Tribunal dated 15 March 2016.

44. By the same order, the Tribunal fixed 10 May 2016 as the time limit for the presentation by Panama of its written observations and submissions on the preliminary objections, and 9 July 2016 as the time limit for Italy to submit its written observations and submissions in reply. These pleadings were filed within the time limits so prescribed.

45. On 4 August 2016, the President adopted an order fixing 20 September 2016 as the date for the opening of the oral proceedings in respect of the preliminary objections.

46. On 22 August 2016, Panama filed a request for "a ruling concerning the scope of the subject matter based on the preliminary objections filed by Italy". Italy objected to this request in a letter dated 23 August 2016.

47. Having examined Italy's written pleadings, the Tribunal found that Italy, in its reply of July 2016, did not make any new objections but rather elaborated and developed the objections already contained in its preliminary objections filed on 11 March 2016.

48. The hearing took place from 20 to 22 September 2016. During the hearing the parties presented their oral statements at six public sittings.

49. In accordance with article 75, paragraph 2, of the Rules, the parties presented the following final submissions during the hearing:

On behalf of Italy:

> For the reasons given in its written preliminary objections dated 10 March 2016, in its written observations and submissions in reply to Panama's observations and submissions of 8 July 2016, and in the course of the present hearing, Italy request[s] that the International Tribunal for the Law of the Sea adjudge and declare that:
>
> (a) The Tribunal lacks jurisdiction with regard to the claim submitted by Panama in its application filed with the Tribunal on 17 December 2015;
>
> And/or that
>
> (b) The claim brought by Panama against Italy in the instant case is inadmissible.

On behalf of Panama:

> For the reasons explained in the application and the observations and during the oral hearings the Republic of Panama requests the International Tribunal for the Law of the Sea to adjudge and declare that:
>
> FIRST
>
> – the Tribunal has jurisdiction over this case;
>
> – the claim made by Panama is admissible; and
>
> SECOND, that as a consequence of the above declarations the written preliminary objections made by the Italian Republic under article 294, paragraph 3, of the Convention are rejected.

50. The Tribunal delivered its judgment on the preliminary objections on 4 November 2016.

51. The facts may be summarized as follows: from 1994 until 1998, the *M/V "Norstar"* was engaged in supplying gasoil to mega yachts in an area described by Panama as "international waters beyond the Territorial Sea of Italy, France and Spain" and by Italy as "off the coasts of France, Italy and Spain". On 11 August 1998, the Public Prosecutor at the Court of Savona, Italy, issued a decree of seizure against the *M/V "Norstar"* in the context of criminal proceedings against eight

individuals. The vessel was seized by the Spanish authorities at the request of Italy when anchored at the bay of Palma de Mallorca, Spain, in September 1998.

52. In support of its claim that the Tribunal had no jurisdiction, Italy invoked the "non-existence of a dispute concerning the interpretation or application of the Convention", the "lack of jurisdiction *ratione personae*" and "the failure by Panama to fulfil its obligations regarding an exchange of views under article 283 of the Convention". The Tribunal rejected these objections and found that it had jurisdiction to adjudicate upon the dispute.

53. In respect of Italy's objection based on the non-existence of a dispute, the Tribunal examined the communications sent to Italy concerning the detention of the *M/V "Norstar"*. It noted that "Panama, as the flag State of the *M/V "Norstar"*, contests the legality of the detention under the Convention" and that, except for one response issued by Italy, "[a]ll other communications ... remained unanswered" (see paras. 97 and 98). The Tribunal took the view that "the notes verbales and other communications sent to Italy and the silence of Italy indicate that in the present case there is a disagreement between the Parties on points of law and fact" (see para. 102). It concluded that "a dispute existed between the parties at the time of the filing of the application" (see para. 103). In order to ascertain whether the dispute between the parties concerned the interpretation or application of the Convention, the Tribunal examined "whether a link exists between the Decree of Seizure against the *M/V "Norstar"* for its activities on the high seas and the request for its execution by the Prosecutor at the Court of Savona, and any rights enjoyed by Panama under the articles of the Convention invoked by it" (see para. 111). In respect of the articles of the Convention invoked by Panama in its application, the Tribunal found that article 87 on the "Freedom of the high seas" and article 300 on "Good faith and abuse of rights" were relevant to the case.

54. With respect to Italy's objection based on lack of jurisdiction *ratione personae*, the Tribunal was of the view that the facts and circumstances of the case indicate that, while the arrest of the *M/V "Norstar"* "took place as a result of judicial cooperation between Italy and Spain, the decree of seizure and the request for its enforcement by Italy were central to the eventual arrest of the vessel" (para. 165). It noted that the detention carried out by Spain was part of the criminal investigation and proceedings conducted by Italy against the *M/V "Norstar"* and that Italy has held legal control over the *M/V "Norstar"* during its detention. The Tribunal found "that the dispute before it concerns the rights and obligations of Italy" and that, therefore, "Italy is the proper respondent to the claim made by Panama in these proceedings" (see paras. 167 and 168). It noted that its decision on jurisdiction and admissibility "does not require the prior determination of Spain's rights and obligations" and therefore it is not indispensable for Spain "to be a party to the present proceedings for the Tribunal to determine whether Italy violated the provisions of the Convention" (see para. 173).

55. As regards Italy's objection "based on the failure by Panama to fulfil its obligations regarding an exchange of views under article 283 of the Convention" (see para. 219), the Tribunal considered that "the absence of a response from one State party to an attempt by another State party to exchange views on the means of settlement of a dispute arising between them does not prevent the Tribunal from finding that the requirements of article 283 have been fulfilled" (see para. 215). It

found that "Panama was justified in assuming that to continue attempts to exchange views could not have yielded a positive result and that it had thus fulfilled its obligation under article 283 of the Convention" (see para. 217).

56. As regards the admissibility of Panama's application, Italy raised objections based on "the nationality of claims" and "the non-exhaustion of local remedies", as well as on "acquiescence, estoppel and extinctive prescription". The Tribunal rejected these objections and found that the application was admissible.

57. Regarding Italy's objection to the admissibility of Panama's application based on "the nationality of claims", the Tribunal, relying on previous jurisprudence, found that "the *M/V 'Norstar'*, flying the flag of Panama, is to be considered a unit and therefore the *M/V 'Norstar'*, its crew and cargo on board as well as its owner and every person involved or interested in its operations are to be treated as an entity linked to the flag State, irrespective of their nationalities" (see para. 231).

58. With respect to the objection of Italy based on "the non-exhaustion of local remedies", having concluded that articles 87 and 300 of the Convention are relevant, the Tribunal was of the view that "the right of Panama to enjoy freedom of navigation on the high seas is a right that belongs to Panama under article 87 of the Convention, and that a violation of that right would amount to a direct injury to Panama" (see para. 270). It considered that "the claim for damage to the persons and entities with an interest in the ship or its cargo arises from the alleged injury to Panama", concluding "[a]ccordingly ... that the claims in respect of such damage are not subject to the rule of exhaustion of local remedies" (see para. 271).

59. Regarding acquiescence, the Tribunal held that "at no stage has the conduct of Panama given scope to infer that it has abandoned its claim or acquiesced in the lapse of its claim" (see para. 304). As to estoppel, the Tribunal considered that "the main elements of estoppel have not been fulfilled in this case" (see para. 307). With respect to extinctive prescription, after noting that "neither the Convention nor general international law provides a time limit regarding the institution of proceedings before it" (see para. 311), the Tribunal found that "Panama has not failed to pursue its claim since the time when it first made it, so as to render the application inadmissible" (see para. 313).

60. After the adoption of the judgment on preliminary objections, on 29 November 2016, the President, having ascertained the views of the parties, adopted an order fixing 11 April 2017 as the time limit for the filing of the memorial of Panama and 11 October 2017 as the time limit for the filing of the counter-memorial of Italy.

B. *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*

61. During consultations held by the President of the Tribunal with representatives of Ghana and Côte d'Ivoire on 2 and 3 December 2014, a special agreement was concluded between the two States on 3 December 2014 to submit the dispute concerning the delimitation of their maritime boundary in the Atlantic Ocean to a special chamber of the Tribunal to be formed pursuant to article 15, paragraph 2, of the Statute. The special agreement was delivered to the Registry on 3 December 2014. The case was entered in the Tribunal's list of cases as case No. 23.

62. By order dated 12 January 2015, the Tribunal decided to accede to the request of the parties and constituted the Special Chamber as follows: Vice-President Bouguetaia, President; Judges Wolfrum and Paik and Judges ad hoc Mensah and Abraham, members. By the same order, the Tribunal decided that the written proceedings would consist of a memorial presented by Ghana and a counter-memorial presented by Côte d'Ivoire, and that the Special Chamber might authorize or direct the presentation of a reply by Ghana and a rejoinder by Côte d'Ivoire, if it so decided, at the request of a party or *proprio motu*, that these pleadings were necessary.

63. On 18 February 2015, the President of the Special Chamber held consultations with the representatives of the parties in order to ascertain their views with regard to questions of procedure.

64. On 24 February 2015, the President of the Special Chamber adopted an order fixing 4 September 2015 as the time limit for the filing of the memorial by Ghana, 4 April 2016 as the time limit for the filing of the counter-memorial by Côte d'Ivoire, and, should the Special Chamber find it necessary to authorize the presentation of a reply and a rejoinder, 4 July 2016 as the time limit for the filing of the reply by Ghana and 4 October 2016 as the time limit for the filing of the rejoinder by Côte d'Ivoire. The memorial and the counter-memorial were filed within the time limits so prescribed.

65. On 27 February 2015, Côte d'Ivoire filed a request for the prescription of provisional measures by the Special Chamber in accordance with article 290, paragraph 1, of the Convention. The Special Chamber delivered its order on 25 April 2015.

66. On 16 March 2016, the Special Chamber adopted an order authorizing the submission of a reply by Ghana and a rejoinder by Côte d'Ivoire and fixing 4 July and 4 October 2016, respectively, as the time limits for the filing of those pleadings.

67. Subsequently, by an order dated 25 April 2016, the President of the Special Chamber extended the time limits for the submission of the reply and the rejoinder to 25 July and 14 November 2016, respectively. The reply and the rejoinder were filed within the extended time limits.

68. On 15 December 2016, the President of the Special Chamber adopted an order fixing 6 February 2017 as the date for the opening of the oral proceedings in the case.

VII. Appointment of arbitrators by the President of the Tribunal pursuant to article 3 of annex VII to the Convention

69. In accordance with article 3 of annex VII to the Convention, if the parties to a dispute are unable to agree on the appointment of one or more members of the arbitral tribunal to be designated by common agreement, or on the designation of the president of the arbitral tribunal, the President of the Tribunal shall make the necessary appointments at the request of any party to the dispute and in consultation with the parties. If the President of the Tribunal is a national of one of the parties to the dispute, the appointment shall be made by the next senior member of the Tribunal who is available and is not a national of one of the parties.

70. Ukraine instituted arbitral proceedings under annex VII to the Convention against the Russian Federation by a notification of arbitration and statement of claim dated 14 September 2016. In its notification and statement of claim, Ukraine appointed Mr. Vaughan Lowe as arbitrator, in accordance with article 3, subparagraph (e), of annex VII, and the Russian Federation, by a note verbale, appointed President Golitsyn as arbitrator in accordance with article 3, subparagraph (e), of annex VII. By a letter dated 29 November 2016, Ukraine, pursuant to article 3, subparagraph (e), of annex VII, requested the Vice-President of the Tribunal to appoint three members of the arbitral tribunal to be constituted and to name one among them to serve as the president of the arbitral tribunal under annex VII. Further to consultations with the parties, on 22 December 2016, the Vice-President appointed Jin-Hyun Paik (Republic of Korea), Boualem Bouguetaia (Algeria) and Alonso Gómez-Robledo Verduzco (Mexico), as arbitrators, and Jin-Hyun Paik as President of the arbitral tribunal.

VIII. Legal matters

71. During the period under review, the Tribunal devoted part of its two sessions to the consideration of legal and judicial matters. In this respect, the Tribunal examined various legal issues of relevance to its jurisdiction, its Rules and its judicial procedures. This review was undertaken both by the Tribunal and by its chambers. Some of the main subjects considered are noted below.

A. Jurisdiction, Rules and judicial procedures of the Tribunal

1. Declarations made under articles 287 and 298 of the Convention

72. During the period under review, the Tribunal took note of the information presented by the Registry concerning the status of declarations made under articles 287 and 298 of the Convention.

2. Conciliation procedures under the Convention

73. During the period under review, the Tribunal considered, on the basis of an information paper prepared by the Registry, issues relating to compulsory and voluntary conciliation procedures under the Convention.

3. Rules of the Tribunal

74. During the period under review, the Tribunal examined issues relating to the publication on the website of the Tribunal of written responses from parties to questions posed by the Tribunal or individual judges in accordance with article 76 of the Rules, as well as of initial reports submitted by parties in provisional measures proceedings before the Tribunal, in accordance with article 95, paragraph 1, of the Rules.

B. Recent developments in law of the sea matters

75. During the period under review, the Tribunal considered reports prepared by the Registry concerning recent developments in law of the sea matters, including recent judgments in maritime delimitation cases.

C. Chambers

76. During the period under review, the Chambers of the Tribunal held meetings in which they considered reports prepared by the Registry on matters falling within the scope of their competence.

IX. Twentieth anniversary of the Tribunal

77. A solemn ceremony to mark the twentieth anniversary of the Tribunal took place on 7 October 2016 at the City Hall of Hamburg, Germany, during which statements were made by Ban Ki-moon, Secretary-General of the United Nations, Joachim Gauck, President of the Federal Republic of Germany, Olaf Scholz, First Mayor and President of the Senate of the Free and Hanseatic City of Hamburg, and Judge Vladimir Golitsyn, President of the Tribunal. The ceremony was attended by more than 500 guests. It was organized with the support of the Federal Republic of Germany and the Free and Hanseatic City of Hamburg.

78. The solemn ceremony was preceded by a two-day international symposium on "The contribution of the Tribunal to the rule of law" and a visit by the Secretary-General of the United Nations to the Tribunal. Over 150 participants, among them judges of the Tribunal, judges of the International Court of Justice and of other judicial institutions, academics, lawyers and counsel who have appeared before international courts and tribunals, attended the symposium. A webcast of the symposium, which was made possible through the financial support of the Government of Japan, is available on the website of the Tribunal (www.itlos.org/en/press-media/twentieth-anniversary-of-the-tribunal).

79. In addition, a round-table discussion on "The role of the Tribunal in the settlement of law of the sea disputes" was held in New York on 23 June 2016 during the twenty-sixth Meeting of States Parties. The round table was organized with the financial contribution of the Korea Maritime Institute.

X. Agreement on Privileges and Immunities

80. The Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, adopted by the seventh Meeting of States Parties on 23 May 1997, was deposited with the Secretary-General of the United Nations and opened for signature at United Nations Headquarters for 24 months as from 1 July 1997.[2] The Agreement entered into force on 30 December 2001, 30 days after the date of deposit of the tenth instrument of ratification or accession. At the closing date for

[2] SPLOS/24, para. 27.

signature, 21 States had signed the Agreement. As at 31 December 2016, 41 States had ratified or acceded to it.

XI. Relations with the United Nations

81. At the 55th plenary meeting of the seventy-first session of the United Nations General Assembly, on 7 December 2016, the President of the Tribunal delivered a statement under agenda item 73 (a), "Oceans and the law of the sea".[3] In his statement, the President highlighted the progress made by the Tribunal since its establishment in 1996, indicating that the cases brought before the Tribunal in recent years have enabled it to broaden and deepen its jurisprudence from the viewpoint of both substantial and procedural law. In this connection, the President cited one decision, delivered in 2016, in case No. 25. He also provided information on events commemorating the twentieth anniversary of the Tribunal, which were organized by the Tribunal and took place in New York and Hamburg, and reported on the various capacity-building programmes it had implemented.

82. Upon the proposal of the Tribunal, the twenty-fifth Meeting of States Parties authorized the Tribunal to subscribe to the Statute of the International Civil Service Commission (ICSC) with effect from 1 January 2016.[4] The Tribunal became a member of ICSC as of that date.

XII. Headquarters Agreement

83. The Headquarters Agreement between the Tribunal and the Government of the Federal Republic of Germany was signed on 14 December 2004. It defines the legal status of the Tribunal in Germany and regulates the relations between the Tribunal and the host country. In addition to its provisions, the terms and conditions under which the premises are made available to the Tribunal by the Federal Republic of Germany are established in the Agreement of 18 October 2000 between the Tribunal and the Government of the Federal Republic of Germany on the Occupancy and Use of the Premises of the International Tribunal for the Law of the Sea in the Free and Hanseatic City of Hamburg.

XIII. Finances

A. Budgetary matters

1. Budget of the Tribunal for 2017-2018

84. The budget proposals for 2017-2018, approved by the Tribunal at its forty-first session, were submitted to the twenty-sixth Meeting of States Parties. The proposals, involving an amount of €21,119,900, were based on an evolutionary approach and guided by the principle of zero growth.

[3] The text of the statement is available on the Tribunal's website: www.itlos.org (English) or www.tidm.org (French).

[4] SPLOS/288, para. 39.

85. The Meeting of States Parties adopted the budget for 2017-2018 in the amount of €21,119,900, as proposed by the Tribunal.

2. Report on budgetary matters for the financial periods 2013-2014 and 2015-2016

86. At its forty-first session, the Tribunal considered the report presented by the Registrar on budgetary matters for the financial periods 2013-2014 and 2015-2016. The report, which was submitted to the twenty-sixth Meeting of States Parties for its consideration,[5] included the following: information on the surrender of cash surplus for the financial period 2013-2014; the provisional performance report for 2015; and a report on action taken pursuant to the Financial Regulations and Rules of the Tribunal (the investments of the funds of the Tribunal, the trust fund for the law of the sea, the Nippon Foundation trust fund, the China Institute of International Studies trust fund and the twentieth anniversary trust fund).

3. Cash flow situation

87. At its forty-first and forty-second sessions, the Tribunal took note of the information presented by the Registrar concerning the cash flow situation of the Tribunal.

B. Status of contributions

88. As at 31 December 2016, 123 States parties had made contributions to the 2015-2016 budget, totalling €18,103,314, while 45 States parties had not made any payments with respect to their assessed contributions for 2015-2016. The balance of unpaid contributions with respect to the 2015-2016 budget was €714,286.

89. Furthermore, assessed contributions amounting to €296,911 in respect of the Tribunal's budgets for the financial periods 1996-1997 to 2013-2014 were still pending as at 31 December 2016.

90. The balance of unpaid contributions with respect to the overall budget of the Tribunal amounted to €1,011,197 as at 31 December 2016. In July 2016, the Registrar sent the States parties notes verbales concerning their assessed contributions, for 2017, to the Tribunal's 2017-2018 budget, including information about outstanding contributions to the previous budgets. In December 2016, the Registrar sent notes verbales to the States parties concerned, reminding them of their outstanding contributions to the budgets of the Tribunal.

C. Financial Regulations and Rules

91. The Financial Regulations of the Tribunal, adopted by the thirteenth Meeting of States Parties on 12 June 2003, became effective on 1 January 2004.[6]

92. The Financial Rules of the Tribunal were proposed by the Registrar pursuant to financial regulation 10.1(a). They were approved by the Tribunal, at its seventeenth session, and submitted to the fourteenth Meeting of States Parties for its

[5] See SPLOS/295.

[6] Financial Regulations, regulation 14.1.

consideration. The Meeting took note of the Financial Rules of the Tribunal, which, according to rule 114.1, became effective on 1 January 2005.[7]

93. Pursuant to financial regulation 12.1, the twenty-sixth Meeting of States Parties appointed BDO as the Auditor for the financial periods 2017-2018 and 2019-2020.

D. Trust funds and donations

94. On the basis of General Assembly resolution 55/7 on "Oceans and the law of the sea", adopted on 30 October 2000, a voluntary trust fund has been established by the Secretary-General to assist States in connection with disputes to be settled by the Tribunal. According to information provided by the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat, the financial statements of the trust fund showed a balance of $142,551 as at 31 December 2016.

95. In 2007, the Nippon Foundation provided a grant to fund the participation of fellows in a capacity-building and training programme on dispute settlement under the Convention. A trust fund was established by the Registrar for this purpose, pursuant to regulation 6.5 of the Financial Regulations of the Tribunal. For the period 2007-2016, the Nippon Foundation made 10 contributions to the grant. As at 31 December 2016, the balance of total reserves stood at €350,449.

96. In 2010, pursuant to a decision of the Tribunal at its twenty-eighth session, the Registrar established a trust fund for the law of the sea, of which the terms of reference were adopted by the Tribunal and submitted for consideration to the twentieth Meeting of States Parties. The trust fund is intended to promote the development of human resources in developing countries with respect to the law of the sea and maritime affairs in general. Contributions made to the trust fund are used to provide applicants from developing countries with financial assistance to enable them to participate in the Tribunal's internship programme and the summer academy. States, intergovernmental organizations and agencies, national institutions, non-governmental organizations and international financial institutions, as well as natural and juridical persons, are invited to make voluntary financial or other contributions to the trust fund. Seven contributions to the trust fund, in the following amounts, have been made so far to support the internship programme: €25,000 in April 2010 by a company from the Republic of Korea and operating in Hamburg; and six contributions of €15,000 each by the Korea Maritime Institute, in October 2011, December 2012, October 2013, December 2014, December 2015 and December 2016. In August 2014 and August 2015, the Korea Maritime Institute made additional contributions to the fund, in the amounts of €20,000 and €31,000, respectively, to be used for the regional workshop held in Nairobi and in Bali, Indonesia. As at 31 December 2016, the balance of total reserves stood at €31,915.

97. In 2012, the China Institute of International Studies provided a grant, in the amount of €100,000, to finance training activities of the Tribunal, including regional workshops, and to provide grants to participants from developing countries in the internship programme and the summer academy. A trust fund was established by the

[7] The Financial Regulations and Rules of the Tribunal are contained in document SPLOS/120.

Registrar for this purpose, pursuant to regulation 6.5 of the Financial Regulations of the Tribunal. As at 31 December 2016, the balance of total reserves stood at €15,542.

98. In 2015, at its fortieth session, the Tribunal approved the terms of reference for a new trust fund, which has been established by the Registrar pursuant to regulation 6.5 of the Financial Regulations of the Tribunal. This trust fund is intended to finance events and activities organized by the Tribunal for the purpose of celebrating its twentieth anniversary and disseminating information on its role in the settlement of disputes relating to the law of the sea. Two contributions to the trust fund, in the following amounts, have been made: €109,443 from the Government of Japan and €50,000 from the Korea Maritime Institute. As at 31 December 2016, the balance of total reserves stood at €28,047.

XIV. Administrative matters

99. During the period under review, the committees of the Tribunal considered various administrative matters within the scope of their activities. Reference to some of the matters considered is made in the subsequent paragraphs.

A. Staff Regulations and Staff Rules

100. During the period under review, the Tribunal approved the recommendations of the Committee on Staff and Administration to adopt amendments to the Staff Regulations of the Tribunal concerning the salary scale for staff in the Professional and higher categories. The amendments were intended to ensure compatibility of the Staff Regulations of the Tribunal with the United Nations common system of salaries, allowances and benefits, pursuant to regulation 12.6 of the Staff Regulations.

101. In addition, during the period under review, in the light of the recommendation of the Committee on Staff and Administration, the Tribunal took note of the proposed amendments to the Staff Rules of the Tribunal concerning retirement age, repatriation grant, assignment grant, excess baggage and unaccompanied shipments, removal and non-removal and loss of entitlement to unaccompanied shipment or removal expenses. Pursuant to regulations 12.2, 12.3 and 12.4 of the Staff Regulations, the amendments to the Staff Rules, which had been provisional, entered into full force and effect on 1 January 2017.

B. Staff recruitment

102. In 2016, the Tribunal recruited staff members for the posts of Senior Translator/Reviser — Head of Linguistic Services (P-5), Associate Legal Officer (P-2), Linguistic Assistant/Judiciary Support (G-6), Administrative Assistant (G-5) and Personal Assistant (Deputy Registrar) (G-5).

103. At the end of 2016, recruitment was in progress for the posts of Personal Assistant (President) (G-6) and Administrative Assistant (Finance) (G-6).

104. A list of the staff members of the Registry as at 31 December 2016 is contained in annex I to the present report.

105. Temporary personnel were recruited to assist the Tribunal during its forty-first and forty-second sessions and during the hearings and deliberations in case No. 25 (preliminary objections).

106. The staff of the Registry consists of 38 staff members, of whom 18 are in the Professional and higher categories. The recruitment of staff members in the Professional category, excluding language staff, is subject to the principle of equitable geographical distribution, in accordance with regulation 4.2 of the Staff Regulations. This regulation provides:

> The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity for securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.
>
> Taking into account the small number of staff in the Registry of the Tribunal, a flexible regional approach has been followed in this regard.

107. The Tribunal has taken steps to ensure that vacancy announcements are disseminated in such a way as to recruit staff on as wide a geographical basis as possible. Information on vacancies is transmitted to the embassies in Berlin of the States parties to the Convention, and to the permanent missions in New York. The information is also posted on the Tribunal's website and published in the press.

108. Although the principle of geographical distribution does not apply to the recruitment of General Service staff, the Tribunal has also made efforts to recruit General Service staff on as wide a geographical basis as possible.

C. Staff Pension Committee

109. Further to the proposal of the Tribunal, the sixteenth Meeting of States Parties decided that a Staff Pension Committee should be established with the following composition: (a) one member and one alternate member to be chosen by the Meeting; (b) one member and one alternate member to be appointed by the Registrar; and (c) one member and one alternate member to be elected by the staff. The term of office of members and alternates is three years.

110. The twenty-sixth Meeting of States Parties adopted a decision extending the nominations of Indonesia as a member and Canada as an alternate member of the Staff Pension Committee for a three-year term of office starting on 1 July 2016 (SPLOS/302).

D. Language classes at the Tribunal

111. English and French classes for Registry staff members were held in 2016.

XV. Buildings and electronic systems

A. Building arrangements and new requirements

112. During the period under review, in cooperation with the Federal Building Authorities of Germany, several improvements were made to the Tribunal's equipment and systems, in particular as concerns the glass facade, the sunshade system and security equipment.

B. Use of the premises and public access

113. The following events took place on the premises of the Tribunal during 2016:

(a) Seminar of the managing directors of the *Verband Deutscher Reeder* (German Shipowners' Association) in the first floor meeting room of the Villa Schröder, 23 March 2016;

(b) Seminar of the Federal Maritime and Hydrographic Agency in the rotunda conference room, 27 April 2016;

(c) International Foundation for the Law of the Sea summer academy, 24 July to 19 August 2016;

(d) IFLOS International Symposium 2016, commemorating the twentieth anniversary of the International Tribunal for the Law of the Sea and the tenth consecutive session of the International Foundation for the Law of the Sea summer academy, 5 August 2016.

114. In addition, some 1,500 visitors took part in organized tours of the premises of the Tribunal in 2016.

XVI. Library, archives and publications

115. During the forty-first and forty-second sessions, the Registrar submitted reports on the Library collections, an integrated library management system and on the status of publications.

116. A list of donors to the Library is contained in annex II to the present report.

117. During the period under review, the following volumes were published:

(a) *ITLOS Reports of Judgments, Advisory Opinions and Orders 2015, Vol. 15*

(b) *ITLOS Pleadings, Minutes of Public Sittings and Documents 2014, Vol. 21*

(c) *ITLOS Pleadings, Minutes of Public Sittings and Documents 2015, Vol. 22*

(d) *ITLOS Yearbook 2014, Vol. 18*

(e) *ITLOS Yearbook 2015, Vol. 19.*

XVII. Public relations

118. During the period under review, the Committee on Public Relations gave consideration to a set of measures to disseminate information on the work of the Tribunal, including the celebration of the twentieth anniversary of the Tribunal and participation by representatives of the Tribunal at international legal meetings. The Tribunal publicized its work by means of its website, press releases and briefings by the Registry and through the distribution of its judgments, orders and publications.

119. The website can be accessed at the following addresses: www.itlos.org (English) and www.tidm.org (French). The texts of judgments and orders of the Tribunal and verbatim records of hearings are available on the website, together with other information about the Tribunal.

XVIII. Capacity-building activities

A. Internship programme

120. The internship programme of the Tribunal, which was established in 1997, is designed to give participants the opportunity to gain an understanding of the work and functions of the Tribunal. Since 2004 funding has been available for applicants from developing countries to assist them in covering the costs incurred for travel to Hamburg and for participation in the programme. From 2004 to 2012, this financial assistance was paid from a trust fund established through a grant provided by the Korea International Cooperation Agency. In 2012 the China Institute of International Studies provided the Tribunal with a grant to support the internship programme. In 2012, the Tribunal also established the "International Tribunal for the Law of the Sea Trust Fund", which is currently used to provide financial assistance to interns. Contributions to the Fund have been received from Korwind and from the Korea Maritime Institute.

121. As at the end of 2016, a total of 326 interns from 94 States had participated in the programme, with 133 interns benefiting from funding.

122. During 2016, 16 persons from 14 different States (Argentina, China, Costa Rica, the Democratic Republic of the Congo, France, the Netherlands, the Philippines, Senegal, South Africa, Trinidad and Tobago, Tunisia, Ukraine, the United Kingdom of Great Britain and Northern Ireland and Viet Nam) served as interns at the Tribunal.

123. Information on the programme and an online application form are available from the Tribunal's websites: www.itlos.org (English) and www.tidm.org (French).

B. Capacity-building and training programme

124. In 2016, for the tenth time, a capacity-building and training programme on dispute settlement under the Convention was conducted with the support of the Nippon Foundation. The Nippon Foundation Grant was set up in 2007 to provide capacity-building and training to fellows and assist them in covering the costs

incurred by participating in the programme. During the programme, participants attend lectures on topical issues related to the law of the sea and maritime law and training courses on negotiation and delimitation. They also visit institutions working in the fields of law of the sea, maritime law and dispute settlement (inter alia, the International Court of Justice and the International Maritime Organization). At the same time, participants carry out individual research on selected topics. Information about the programme can be obtained from the Registry or from the Tribunal's websites: www.itlos.org (English) and www.tidm.org (French).

125. Nationals of Cambodia, Cameroon, the Democratic Republic of the Congo, Portugal and Thailand are participating in the 2016-2017 programme (July 2016-March 2017).

C. Summer academy

126. The International Foundation for the Law of the Sea held its tenth summer academy at the Tribunal's premises from 24 July to 19 August 2016. The academy focused on "Uses and Protection of the Sea — Legal, Economic and Natural Science Perspectives". Lectures given by judges of the Tribunal as well as experts, practitioners, representatives of international organizations and scientists on issues relating to the law of the sea and maritime law were attended by 37 participants from 34 different countries.

Annex I

List of the staff members of the Registry as at 31 December 2016

Professional and higher categories

Name	*Title*	*Country of nationality*	*Level of post*	*Level of incumbent*
Gautier, Philippe	Registrar	Belgium	ASG	ASG
Kim, Doo-young	Deputy Registrar	Republic of Korea	D-2	D-2
Hinrichs, Ximena	Senior Legal Officer/Head of Legal Office	Chile	P-5	P-5
Guy, Pauline	Senior Translator/Reviser — Head of Linguistic Services	United Kingdom	P-5	P-5
Savadogo, Louis	Legal Officer	Burkina Faso	P-4	P-4
Mizerska-Dyba, Elzbieta	Head of Library and Archives	Poland	P-4	P-4
Gaba Kpayedo, Kafui	Head of Personnel, Building and Security	Togo	P-4	P-4
Füracker, Matthias	Legal Officer	Germany	P-4	P-4
Gaultier, Léonard	Translator/Reviser (French)	France	P-4	P-4
Ritter, Roman	Head of Budget and Finance	Germany	P-4	P-3
Gbadoe, Alfred	Information Technology Officer	Germany	P-3	P-3
Rostan, Jean-Luc	Translator (French)	France	P-3	P-3
Saab, Yara	Legal Officer	Lebanon	P-3	P-3
***Ritter**, Julia	Press Officer	United Kingdom	P-2	P-2
****Jimenez Sanchez**, Rosa	Associate Archivist	Spain	P-2	P-2
Buergers-Vereshchak, Svitlana	Associate Administrative Officer (Contributions/Budget)	Ukraine	P-2	P-2
Vorbeck, Antje	Associate Administrative Officer (Personnel)	Germany	P-2	P-2
Burke, Naomi	Associate Legal Officer	Ireland	P-2	P-2

Total posts: 18

* The post of Press Officer is occupied 50 per cent by the incumbent of the post, Ms. Ritter. The remaining 50 per cent is currently occupied by Mr. Benjamin Benirschke on the basis of a temporary appointment.

** Ms. Jimenez Sanchez is on special leave until 13 July 2017. The post is currently occupied by Ms. Anna Sobczak on the basis of a temporary appointment.

General Service

Name	*Title*	*Country of nationality*	*Level of post*	*Level of incumbent*
Bothe, Andreas	Building Coordinator	Germany	G-7	G-7
Egert, Anke	Publications/Personal Assistant (Registrar)	Germany	G-7	G-7
Winkelmann, Jacqueline	Administrative Assistant (Procurement)	Germany	G-7	G-7
Mba, Patrice	Information Systems Assistant	Cameroon	G-7	G-7
Albiez, Berit	Linguistic Assistant/Judiciary Support	Germany	G-7	G-7
Vacant	Personal Assistant (President)		G-7	
Naegler, Thorsten	Finance Assistant	Germany	G-6	G-6
Karanja, Elizabeth	Administrative Assistant	Kenya	G-6	G-6
Koch, Béatrice	Legal Assistant	France	G-6	G-6
Bartlett, Emma	Personnel Assistant	United Kingdom	G-6	G-6
Heim, Svenja	Library Assistant	Germany	G-6	G-6
Rakotomalala, Brigitte	Linguistic Assistant/Judiciary Support	France	G-6	G-6
Vacant	Administrative Assistant (Finance)		G-6	
Fusiek, Christoph	Finance Assistant (Accounts Payable)	Germany	G-5	G-5
Marzahn, Inga	Administrative Assistant	Germany	G-5	G-5
Fislage, Sylvie	Personal Assistant (Deputy Registrar)	France	G-5	G-4
Banerjee, Mita	Administrative Assistant	Germany	G-5	G-4
Duddek, Sven	Senior Security Officer/Building Superintendent	Germany	G-4	G-4
Aziamble, Papagne	Administrative Support/Driver	Togo	G-4	G-4
Ntinugwa, Chuks	Security Officer/Driver	Germany	G-3	G-3

Total posts: 20

Annex II

List of donors to the Library of the International Tribunal for the Law of the Sea as at 31 December 2016

Levan Aleqsidze, Ivane Javakhishvili Tbilisi State University, Tbilisi

Brill Publishing House, Leiden, the Netherlands

British Institute of International and Comparative Law, London

Bundesamt für Seeschifffahrt und Hydrographie, Hamburg, Germany

Division for Ocean Affairs and the Law of the Sea of the United Nations, New York

GEOMAR Helmholtz Centre for Ocean Research, Kiel, Germany

International Seabed Authority, Kingston

Japan Branch of the International Law Association, University of Tokyo, Faculty of Law, Tokyo

Seokwoo Lee, Inha University Law School, Incheon, Republic of Korea

Mare, Die Zeitschrift der Meere, Hamburg, Germany

Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Heidelberg, Germany

Ministry of Foreign Affairs, Singapore

Northwest Atlantic Fisheries Organization, Dartmouth, Canada

Juan Emilio Oviedo Cabañas, Tribunal Permanente de Revisión MERCOSUR, Asunción

Judge Antônio Augusto Cançado Trindade, International Court of Justice, The Hague, the Netherlands

Walther-Schücking-Institut für Internationales Recht an der Universität Kiel, Germany

World Trade Organization, Geneva